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Filing date: **05/17/2012**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92051465
Party	Defendant Edge Games, Inc., and Future Publishing, Ltd.
Correspondence Address	TIM LANGDELL EDGE GAMES INC 530 SOUTH LAKE AVENUE, 171 PASADENA, CA 91101 UNITED STATES uspto@edgegames.com
Submission	Other Motions/Papers
Filer's Name	Tim Langdell
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Signature	/Tim Langdell/
Date	05/17/2012
Attachments	EdgeGamesReply17May12.pdf (22 pages)(419981 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the Matter of Registration No. 3,559,342
For the Trademark THE EDGE
Issued January 13, 2009

In the Matter of Registration No. 3,381,826
For the Trademark GAMER'S EDGE
Issued February 12, 2008

In the Matter of Registration No. 3,105,816
For the Trademark EDGE
Issued June 20, 2006

In the Matter of Registration No. 2,251,584
For the Trademark CUTTING EDGE
Issued June 8, 1999

In the Matter of Registration No. 2,219,837
For the Trademark EDGE
Issued January 26, 1999

EA DIGITAL ILLUSIONS CE AB, a Swedish Corporation; ELECTRONIC ARTS INC., a Delaware corporation,

Petitioners,

V.

**EDGE GAMES, INC., a California corporation;)
FUTURE PUBLISHING LTD, a UK corporation)**

Co-Defendants.

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**EDGE GAMES INC.'S
REPLY TO PETITIONERS
EA DIGITAL ILLUSIONS
CE AB, ELECTRONIC ARTS
INC., and CO-DEFENDANT
FUTURE PUBLISHING
LTD'S JOINT OPPOSITION
TO EDGE GAMES INC.'S
MOTION FOR
RECONSIDERATION
AND REQUEST TO DISMISS
PROCEEDINGS.**

Cancellation No. 92051465

Trademark Trial and Appeal Board
U.S. Patent and Trademark Office
P.O. Box 1451
Alexandria, Virginia 22313-1451

1. If the Board was not clear that this action is a collaboration between Petitioners (“EA”) and Co-Defendant Future Publishing Ltd (“Future”) as an act of commercial sabotage to unfairly deprive Co-Defendant Edge Games, Inc. (“Edge Games”) of its rightful trademark registrations, then the fact Petitioner and Co-Defendant Future filed this latest document as a single, joint Opposition is glaring proof of what the true motivations of EA and Future are.

2. To highlight how absurd this situation is, the Board will please remind itself that the underlying action in these proceedings (at least insofar as it pertains to Reg. Nos. 3,559,342 and 3,105,816 co-owned by Future) EA are petitioning to allege that Future has abandoned these registered trademarks or that Future has committed fraud on the USPTO on obtaining these trademarks. And yet, despite the underlying petition being a serious accusation by EA against Future, here we have the two opposing parties trying to pretend this is not the underlying issue in these proceedings, and joining forces solely to seek to unfairly deprive Edge Games of its ownership of the marks.

3. And to further highlight how absurd this situation is, in the 2010 District Court action EA’s Counterclaim (at least as to Reg. Nos. 3,559,342 and 3,105,816) also accused Future of abandoning its registered marks, and accused Future of obtaining its registered marks by fraud on the USPTO. And this was the case even though EA refused to name Future as a party to the civil court action alongside Edge Games, since EA was making the same allegations against Future as against Edge Games by virtue of the joint ownership of the marks that EA was attacking.

4. The Board cannot be under any doubt that if the instant proceedings were to be continued as the Board originally ruled they were to be (July 7, 2011, docket #42, and then August 25, 2011 Docket #48), then of course Co-Defendant Future would immediately stop

acting as if it were a Co-Petitioner working in concert with EA against Co-Defendant Edge Games, and instead the Board is fully aware that Future would switch to actively being a Co-Defendant aggressively defending itself against EA's allegations against it (Future) that it has either abandoned the registrations it co-owns, or that Future committed fraud on the USPTO in obtaining the registrations in question. That is how absurd these proceedings have become.

5. And to yet further highlight how absurd this situation is, Co-Defendant Future in its (then) Intervener's Response dated March 4, 2011 (Docket #40) stated:

"On November 14, 2010, Registrant moved to voluntarily surrender Reg. No. 3,105,816 (the "Subject Registration") pursuant to a settlement agreement reached between Registrant and Petitioner following civil litigation. Future was not a party to the civil litigation, these cancellation proceedings, or the settlement agreement that resulted in the attempted surrender of the Subject Registration. On February 18, 2011, Registrant moved to withdraw or reverse its previous voluntary surrender on grounds that it lacked the power or authority to file a Section 7 Surrender for the Subject Registration as a result of the partial assignment thereof to Future. ...

Future hereby states for the record as a proper intervener in these proceedings that it objects ... to the extent that Registrant did not have the right or authority to surrender that portion of the Subject Registration that had previously been assigned to Future."

6. Co-Defendant Future, then, is on record as confirming that since it was not a party to the District Court Action and not a party to the Settlement between EA and Edge Games, thus Edge Games had no standing or authority to surrender Reg. No. 3,105,816. The Board rightly ruled that this is the case, and granted Edge Game's motion to reverse the Section 7 Voluntary Surrender of this registration. By simple logic, since Future also jointly owns Reg. No.

3,559,342, Future must accept that Edge Games had no standing or authority to surrender this registration, either.

7. Future's confirmation that the fact it was not a party to the District Court means that Future has clearly agreed and confirmed that Edge Games lacked authority to take any action or make an agreement that in any way impacted the trademark registrations owned jointly by Future and Edge Games. That is, Future's statement in Docket #40 stands as clear proof that Future agree that since it was not a party to the District Court Action Edge Games lacked authority to enter the stipulated order, and the court similarly lacked jurisdiction to issue the Final Order. By Future's own admission and representations, then, the District Court's October 2010 Order is void because Future would have had to be a part to the civil law suit for any order arising out of it to be valid. Future's statement in Docket #40 thus stands as proof the District Court's Final Order was invalid and void on its face.

8. Similarly, Future's confirmation that the fact it was not a party to the Settlement means that Edge Games lacked the standing or authority to enter into any Settlement with EA that in any way impacted the trademark registrations co-owned by Future and Edge Games. Thus Future's statements in Docket #40 stand as proof that the Settlement between EA and Edge Games is also invalid and void on its face.

9. Indeed, the exact same reasoning that correctly lead the Board to reverse the Section 7 Voluntary Surrender of 3,105,816 applies to the District Court's Final Order, should easily enable the Board to conclude that the Court Order is void on its face due to the absence of Future as a necessary and indispensable party to the civil court action (as Future itself points out in Docket #40). Neither additional "proof" that the Order is void, nor additional "relief" from

that Order, should be necessary or called for, since by Future's own admission the Order is obviously void on its face.

Edge Games Motions For Reconsideration (Docket Nos. 69 & 70)

10. Co-Respondents argue that Edge Games' motions should be denied because Edge Games did not present any new argument or evidence. However, as the Board is aware, the Board gave no explanation whatsoever for its denial of the motions. Thus since Edge Games has no hint at all why the Board denied the motions, Edge Games is in an impossible position to know on what basis to challenge the Board's decisions. Certainly, the Board's decision to deny the motion to withdraw (reverse) the Section 7 Surrender of Reg. No. 3,559,342 appears to be a simple error by the Board since the argument as to why this Surrender should be reversed is identical to the argument as to why 3,105,816 should be reversed, and the Board already ruled in favor of Edge Games and reversed the Surrender of 3,105,816.

11. Since Edge Games' argument that it was not the sole owner of the registration and thus lacked authority to file a voluntary surrender was deemed a correct argument by the Board in respect to the co-owned mark 3,105,816 there is no reason Edge Games can conceive of why the Board would not have granted reversal of Surrender of 3,559,342 since the situation is identical, the ownership is identical, and the legal argument is identical

12. Should the Board's inconsistent ruling be related to any question of whether Reg. No. 3,559,342 is jointly owned by Future and Edge Games, then attached in Exhibit A is the record of assignment for this registration. As can be seen, the mark originally matured to registration in the name of The Edge Interactive Media, Inc (filed October 27, 2004, effective October 15, 2004). There was then a corrective assignment filed on November 2, 2005 (also

effective October 15, 2004) clarifying that on maturation to the Register the mark should have showed as jointly owned by Future and Edge Interactive. Then there is a further assignment dated April 30, 2008 that assigned the entirety of Edge Interactive's interest in the mark to Edge Games Inc (but which left Future's partial ownership with Future). **Consequently, there is no doubt whatsoever that as at the date of the District Court Hearing in October 2010, and as of the date of the voluntary surrenders of November 14, 2010, this registration No. 3,559,342 was indeed jointly owned by Future and Edge Games, just as was Reg. No. 3,105,816.** If the Board has any problem reading this record of assignment, then Edge Games would be happy to file further clarificatory amendments to ensure Future's co-ownership of this mark is perfectly clear.

13. It is not surprising, then, that Edge Games filed its motion for reconsideration on the existing (previously successful) grounds that it is not the sole owner of the mark in question. **Indeed, with *deep* respect, Edge Games should not have had to file motions to withdraw (reverse) the Section 7 Surrenders of Reg. Nos. 3,105,816 and 3,559,342 since it should have been sufficient for the Board on its own initiative, as part of diligent processing of the Surrenders, to observe that at least two of the registrations in question were not solely owned by Edge Games, and thus for the Board to automatically reject the Surrenders of at least these registrations on the same basis the Board ruled in Edge Games' favor in its July 11, 2011 Order (Docket #42).** Indeed this Order stands as the Board's effective acknowledgement that the Court Order must be void since as the Board itself points out in its July 11, 2011 Order, Future was not a party to the civil court action.

14. Similarly for Edge Games' argument that the division of Reg. No. 2,219,837 should be reversed, and consequently the Surrender of 2,219,837 should be reversed, too.

Surveying the history of Board actions, the Board has previously been consistent in not permitting the processing of any post-registration action in respect to a registration that is subject to Board proceedings – irrespective of whether the post-registration action was commenced before the Board proceedings commenced, or not. Thus while Edge Games does not present new argument or evidence, this is because the Board has failed to supply any rationale or reasoning to its decision to deny these motions, leaving Edge Games with no option other than to ask for reconsideration on the same grounds given the grounds seem incontestably valid.

Edge Games’ Motion To Dismiss Proceedings (Docket #71) and Edge Games’ Further Response to the Board’s Order Dated 30 March 2012 (Docket #72)

15. With *deep* respect, the Motion on Consent dated November 14, 2012 is still valid and neither Petitioners nor Co-Defendant Future can withdraw that Motion now. By filing that Consent Motion Petitioners entered into a binding irreversible decision to terminate these proceedings subject solely to Edge Games filing the agreed Section 7 Voluntary Surrenders. The only impact Future’s Intervener Response had was to confirm Edge Games’ position that in at very least two of the voluntary surrenders (3,105,816 and 3,559,342), as well as probably 2,219,837, too, since Edge Games was not the sole owner of these registrations the Voluntary Surrenders were invalid.

16. The consequence then, is simply that the Board terminate the proceedings per the Consent Motion of November 14, 2010, but that the Board rejects the surrenders where they pertain to registrations co-owned by Future, leaving those registrations still registered (not canceled) at the point of termination of the proceedings. It is not Edge Games’ fault that EA required Edge Games to file invalid Section 7 Surrenders, and despite what EA and Future now try to argue, there was and is no obligation on the part of Edge Games to be successful in

obtaining the surrenders, Edge Games' only obligation to meet the requirement of the Consent Motion was that it file the surrenders (which it did). Thus these proceedings should be terminated in accord with the Consent Motion of November 14, 2010, leaving at least Reg. Nos. 3,105,816 and 3,559,342 still registered and, we still maintain, leaving Reg. No. 2,219,837 undivided and still registered, too.

Proof that the District Court Order is Void (Gaining Further Relief From Order)

Co-Respondent's Suggestion That Edge Games File a Motion Based on FRCP 60(b)(4)

17. Finally, Edge Games wishes to address this question again raised by the Board's March 30, 2012 Order.

18. Co-Respondents assert in their filing dated May 2, 2012 “*Despite the reasonable opportunity afforded by the Board*” [Edge failed to file any motion for relief of the court order]. With *deep* respect, the Board gave Edge Games a mere 20 days from March 30 despite being aware that Edge Games is in Pro Se in these proceedings. Twenty days was not a fair and reasonable amount of time for the Board to give Edge Games just to retain legal representation, let alone for Edge Game's newly retained counsel to draft and file any motion (or other document) with the District Court or the Court of Appeals, or to decide what course of action might be appropriate given the Board's demand. Indeed, even now, despite Edge Games consistently seeking to engage attorneys to represent it in respect to this request to show proof of relief or application for relief, so far Edge Games has not been successful in identifying or retaining such legal representation. This is not due to any delay or inaction on Edge Games' part – Edge Games has been in discussions with several potential law firms since the moment it received the Board's March 30 Order – rather, it is due to the fact that it is a truism that this is a very complex issue and it will take time for Edge Games to identify and retain legal counsel, far

more than the 20 days given or indeed the number of days that have passed to-date, and for such new legal counsel to consider and draft whatever motion or other filing might be appropriate to seek the proof of void order, or further relief, that the Board is requesting.

19. The consensus from more than six reputable law firms Edge Games has been discussing instructing to represent it in relation to FRCP 60(b)(4) is that a motion under this Rule is only appropriate where a court's ruling is voidable but not when it is *void on its face*. That is, a motion under FRCP 60(b)(4) should only be filed when there is some doubt as to whether a court's order may be void, in its entirety or in part, but it should not be necessary when a court order is (as here) void on its face due to the clear and obvious absence from the proceedings of a necessary and indispensable party that the order impacted. The consensus of opinion given Edge Games thus far is that Edge Games already has all the relief it could reasonably be required to gain by the Board, in that the court order is void on its face, and thus Edge Games already has 100% relief.

20. As Edge Games has stated above, the Board gave an unreasonably short time for it to identify and retain legal representation, let alone time to prepare and file any motion or appeal for further relief from the court order. Thus as of this time Edge Games still has no representation despite seeking it daily since March 30, 2012. And, again, this is not due to any inexcusable delay by Edge Games, this is solely due to the immense complexity of this case and the fact it is a truism that any company in Edge Game's position would need more time to retain counsel and have that counsel research the law, prepare and file any document seeking further relief than Edge Games already possesses – if indeed relief beyond the 100% relief Edge Games already enjoys is in fact obtainable.

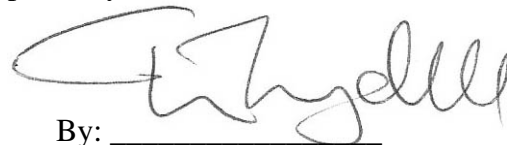
21. Mindful, though, that the Board is insistent that Edge Games seek such additional

proof of relief from the court order – proof that the order is indeed void – **Edge Games has filed a motion under FRCP 60(b)(4) with the District Court** that issued the original (void) stipulated order (please see attached copy of motion as Exhibit B). Edge Games is concurrently filing a new motion in these proceedings requesting a stay of proceedings pending the outcome of this motion, but also repeats that **request here for a Stay pending the outcome the District Court Motion**. Edge will supply a conformed copy of the Motion to the Board as soon as it is available. While Edge did not file the motion within the 20 days the Board indicated, we say that it would be unreasonable and unfair of the Board not to accept that the motion has been filed as soon as it reasonably could be, and thus the motion should be taken as timely in accord with the Board's March 30, 2012 order. That is, it would be grossly unfair and unreasonable for the Board to ignore the fact of this motion filed in the District Court just because it was not filed within the requested 20 days since the outcome of the motion will be dispositive on these proceedings – indeed the outcome of the motion will clarify and determine the outcome.

22. The above withstanding, Edge Games still asks that the Board accept the Court's Final Order as void on its face and grant Edge Games Motion to Dismiss the Proceedings and that the Board not require Edge Games to provide any further proof of relief of the Court Order.

Date: May 17, 2012

Respectfully submitted,



By: _____

Dr. Tim Langdell, CEO
EDGE Games, Inc.
Co-Defendant in *Pro Se*
530 South Lake Avenue, 171
Pasadena, CA 91101
Telephone: 626 449 4334
Facsimile: 626 844 4334
Email: ttab@edgegames.com

Certificate of Service

In accordance with the Trademark Rules of Practice, as amended, it is hereby certified that a true copy of the foregoing EDGE GAMES INC.'S REPLY TO EA DIGITAL ILLUSIONS CE AB, ELECTRONIC ARTS INC., and CO-DEFENDANT FUTURE PUBLISHING LTD.'S JOINT OPPOSITION TO EDGE GAMES INC.'S MOTION FOR RECONSIDERATION AND REQUEST TO DISMISS PROCEEDINGS was served on the following counsel for Co-Defendant and on Petitioners in Pro Se, by depositing same in the U.S. Mail, first class postage prepaid, this 17th day of May, 2012:

Robert N. Phillips
Reed Smith LLP
101 Second Street, Suite 1800
San Francisco, CA 94105

Vineeta Gajwani
Electronic Arts Inc.
209 Redwood Shores Parkway
Redwood City, CA 94065


Cheri Langdell

EXHIBIT A



United States Patent and Trademark Office

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Trademark Assignment Abstract of Title

Total Assignments: 4

Serial #: 75077113

Filing Dt: 03/22/1996

Reg #: 3559342

Reg. Dt: 01/13/2009

Registrant: EDGE Games, Inc.

Mark: THE EDGE

Assignment: 1

Reel/Frame: 2965/0742

Received: 10/27/2004

Recorded: 10/27/2004

Pages: 4

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: THE EDGE INTERACTIVE MEDIA, INC.

Exec Dt: 10/15/2004

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Entity Type: COMPANY

Citizenship: UNITED KINGDOM

Assignee: FUTURE PUBLISHING LTD.

BEAUFORD COURT

30 MONMOUTH STREET

BATH BA1 2BW, UNITED KINGDOM

Correspondent: BOBBY GHAJAR

HOWREY SIMON ARNOLD & WHITE, LLP

2941 FAIRVIEW PARK DRIVE, BOX 7

FALLS CHURCH, VA 22042

Assignment: 2

Reel/Frame: 3186/0406

Received: 11/02/2005

Recorded: 11/02/2005

Pages: 4

Conveyance: CORRECTIVE ASSIGNMENT TO CORRECT THE APPLICANT/OWNER, WHICH SHOULD BE LISTED AS THE EDGE INTERACTIVE MEDIA. PREVIOUSLY RECORDED ON REEL 002965 FRAME 0742. ASSIGNOR(S) HEREBY CONFIRMS THE APPLICATION SHOULD REGISTER IN THE NAME OF THE EDGE INTERACTIVE MEDIA, SUBJECT TO A PARTIAL ASSIGNMENT TO FUTURE PUBLISHING..

Assignor: THE EDGE INTERACTIVE MEDIA, INC.

Exec Dt: 10/15/2004

Entity Type: CORPORATION

Citizenship: NONE

Entity Type: CORPORATION

Citizenship: CALIFORNIA

Assignee: THE EDGE INTERACTIVE MEDIA, INC.

530 SOUTH LAKE AVENUE

SUITE 171

PASADENA, CALIFORNIA 91101

Correspondent: ROBERT N. PHILLIPS

525 MARKET STREET SUITE 3600

SAN FRANCISCO, CA 94105

Assignment: 3

Reel/Frame: 3769/0309

Received: 04/30/2008

Recorded: 04/30/2008

Pages: 3

Conveyance: ASSIGNS THE ENTIRE INTEREST

Assignor: THE EDGE INTERACTIVE MEDIA, INC.

Exec Dt: 02/21/2008

Entity Type: CORPORATION

Citizenship: NONE

Entity Type: CORPORATION

Citizenship: NONE

Assignee: EDGE GAMES, INC.

530 SOUTH LAKE AVENUE

#171

PASADENA, CALIFORNIA 91101

Correspondent: TIM LANGDELL

530 SOUTH LAKE AVENUE

#171

PASADENA, CA 91101

Assignment: 4**Reel/Frame:** 4694/0107**Received:** 01/09/2012**Recorded:** 01/09/2012**Pages:** 10**Conveyance:** ASSIGNS THE ENTIRE INTEREST**Assignor:** EDGE TECH CORPORATION**Exec Dt:** 01/09/2012**Entity Type:** CORPORATION**Citizenship:** OKLAHOMA**Entity Type:** CORPORATION**Citizenship:** NEVADA**Assignee:** AVANT TECHNOLOGY, INC.

828 NEW MEISTER LANE, #300

ATTN: TIM PEDDECORD, PRESIDENT

PFLUGERVILLE, TEXAS 78660

Correspondent: PAUL B. SAENZ

401 CONGRESS AVENUE, SUITE 2200

AUSTIN, TX 78701

Search Results as of: 05/17/2012 07:24 PM

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Web interface last modified: Jan 26, 2012 v.2.3.1

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EXHIBIT B

EDGE GAMES, INC.
Dr Timothy Langdell, CEO
530 South Lake Avenue, 171.
Pasadena, CA 91101
Telephone: (626) 449 4334
Facsimile: (626) 844 4334
corp@edgegames.com

Plaintiff in Pro Se,
.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

EDGE GAMES, INC., a California corporation,

Plaintiff,

v.

ELECTRONIC ARTS INC. a Delaware
corporation,

Defendant.

Case No.

**PLAINTIFF EDGE GAMES' NOTICE
OF MOTION AND MOTION UNDER
FRCP 60(b)(4) TO CONFIRM THE
COURT'S FINAL ORDER VOID.**

Date: August 16, 2012

Time: 8:00 a.m.

Judge: Judge William Alsup

Location: Courtroom 9, 19th Floor

1 **TO DEFENDANT ELECTRONIC ARTS INC. AND ITS ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on August 16, 2012, at 8:00 a.m., or as soon thereafter as the
3 matter may be heard, before the Honorable William Alsup, United States District Court, Northern
4 District of California, Courtroom 9, 450 Golden Gate Avenue, San Francisco, California, Plaintiff Edge
5 Games, Inc., will move in accord with FRCP 60(b)(4) the Court to confirm the Court's Final Order to be
6 void.
7

8 Edge Games respectfully requests that the Court's Final Order be confirmed as void on its face
9 (void *ab initio*) due to a necessary and indispensable party not being a party to the proceedings.

10 **INTRODUCTION**

11 Edge Games Inc ("Edge Games") and Electronic Arts Inc ("EA") (collectively, the "parties")
12 came before the Court in October 2010 for a hearing on Edge Games motion for preliminary injunction.
13 The result of the hearing was that the Court's ruling was to deny Edge Game's motion. As a subsequent
14 consequence of this ruling the parties entered into a settlement agreement which in turn called for a
15 Stipulated Judgment and Final Order that in substantial part called for the cancellation of what were
16 misleadingly styled as Edge Games' U.S. registered trademarks, Nos. 3,559,342, 3,381,826, 3,105,816,
17 2,251,584, and 2,219,837.
18

19 However, the Court's Final Order and Stipulated Judgment were invalid (void on their face)
20 because the U.S. registered trademarks in question were not all solely owned by Edge Games. Rather, at
21 the time of the court proceedings and the making of the Final Order indisputably two, and Edge Games
22 says three, of the five trademark registrations were owned jointly by Edge Games and a third party
23 (Future Publishing Limited, a UK corporation) that was not a party to the legal proceedings.
24

25 As of the date of filing this motion the USPTO has still not canceled the trademark registrations
26 in question, in large part because some of the registrations are owned by a party that was not a party to
27
28

1 the law suit which indicates the Court's Order to be defective (void). Edge Games also tried to file
2 Section 7 Voluntary Surrenders of the trademarks in question, but the USPTO has also not processed
3 those Voluntary Surrenders either, and indeed the USPTO has ruled that Edge Games lacks the standing
4 or authority to voluntarily surrender any registered trademark that Edge Games is not the sole owner of.

5
6 Since the Court lacked jurisdiction to make an order binding or otherwise impacting an interested
7 party that was not a party to the law suit, and since Edge Games lacked standing or authority to either
8 agree to the settlement with EA or agree to the Stipulated Judgment and Order that included cancellation
9 of trademarks Edge Games was not sole owner of, consequently the Stipulated Judgment and Final
10 Order (and the settlement) are each void on their face (void *ab initio*). Most pertinently, the Court's
11 Final Order is thus void.

12 **STATEMENT OF FACTS**

13
14 While EA's Counterclaim in these legal proceedings sought to cancel what it styled as Edge
15 Games' U.S. registered trademarks, what EA failed to draw to the court's attention was that at least two,
16 and Edge Games says three, of the trademarks in question were (and still are) owned jointly by Edge
17 Games and a third party that was not a party to the law suit or the settlement.

18 The trademark database records clearly show that of the five trademark registrations the Final
19 Order sought to cancel, at least two of them (Reg. Nos. 3,559,342 and 3,105,816) are co-owned by
20 Edge Games and a third party, Future Publishing Limited ("Future") (see Exhibit A being a print out of
21 the USPTO database record proving these marks are co-owned by Future and Edge Games, and were co-
22 owned at the time of the Court's Final Order being made). Moreover, a third of the five registered
23 trademarks (Reg. No. 2,219,837) was also jointly owned by Future and Edge Games, but was mistakenly
24 divided by the USPTO prior to October 2010. Thus while the USPTO database reflects that this third
25 mark was solely owned by Edge Games as at the time of the Final Order, in fact once the error by the
26
27
28

1 USPTO in dividing the mark has been corrected, this mark too will be retroactively deemed co-owned
2 by Future and Edge Games as at the time the Final Order was made (see Exhibit A for the USPTO
3 database record of this mark's assignment record).

4 While the Court's Final Order calling for the cancellation of the five trademark registrations in
5 question was filed with the USPTO, the USPTO did not act on the order. It is believed that this is in
6 significant part due to the order being made against Edge Games Inc whereas Edge Games Inc was not
7 (and is not) the sole owner of all five trademark registrations listed in the Court's Final Order.

8
9 In November 2010 EA and Edge Games came to a modified agreement that the USPTO
10 cancellation proceedings commenced by EA in 2009 would be re-opened, and Edge Games would file
11 Section 7 Voluntary Surrenders of all five trademark registrations listed in the Court's Final Order.
12 However, the USPTO ruled that Edge Games lacked standing or authority to voluntarily surrender any
13 trademark registration that it was not the sole owner of (see USPTO ruling in Exhibit B). Furthermore,
14 when Edge Games sought to file the voluntary surrenders of the five trademark registrations in question,
15 Future in the role as "Intervener" filed a protest with the USPTO strongly challenging Edge Game's
16 right to voluntarily surrender any trademark registration that Future co-owns with Edge Games. In
17 arguing why Edge Games should not be permitted to voluntarily surrender any of the registrations co-
18 owned by Future, Future referenced the fact that it was not a party to the law suit that resulted in the
19 Final Order to cancel the marks that it co-owns and Future was not a party to the settlement agreement
20 between EA and Edge Games that agreed the cancellation of the co-owned marks or agreed to the
21 Stipulated Judgment and Final Order. In short, Future argued in real terms that since it was not a party
22 either to the civil court action or the settlement then neither the Court's Judgment and Final Order or the
23 settlement were valid since to be valid Future would have needed to be a party to the court case and to
24 the settlement (See Future's "Intervener's" filing in Exhibit C).

1 As a result of Future's Intervener's filing in the USPTO cancellation proceedings, the USPTO
2 compelled Future to become a co-defendant along side Edge Games in those proceedings. Further, the
3 USPTO reversed its decision to cancel the five trademark registrations listed in the Court's Final Order
4 (see Exhibit D).

5 The five trademark registrations that were falsely described by EA as being "Edge Game's U.S.
6 trademark registrations" (when in fact they were co-owned by Future) have thus not been canceled
7 because the Courts Final Order was invalid (void) due to Future being an interested party as co-owner of
8 the marks, and yet Future was not a party to the law suit that gave rise to the Order.
9

10 **LEGAL ARGUMENT**

11 It is well established by Supreme Court rulings that if an interested party to a court action is not a
12 party to that action, then any Order resulting from that action is void on its face. Here, Future Publishing
13 Ltd by virtue of being the co-owner of several of the U.S. registered trademarks that EA sought to
14 cancel, and which the Court's Final Order called for the cancellation of, was not just an interested party,
15 Future was an *essential* and *indispensable* party. In the absence of Future as a party to the court action
16 (and indeed as a party to the settlement, either), the court lacked jurisdiction to make the Stipulated
17 Judgment and Final Order that it made. Edge Games also thus lacked standing or authority to agree to
18 the stipulated Judgment and Order, too.
19

20 The U.S. Supreme Court stated in *Vallely*:

21 *"Courts are constituted by authority, and they cannot go beyond that authority, and*
22 *certain in contravention of it, their judgments and orders are regarded as nullities. They*
23 *are not voidable, but simply void, and this is even prior to reversal."* (emphasis added).
24

25 *Vallely v. Northern Fire and Marine Ins. Co.*, 254 U.S. 348, 41 S. Ct. 116 (1920). See
26 also, *Old Wayne Mut. I. Assoc. v. McDonough*, 204 U.S. 8, 27 S.Ct.236 (1907);
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1 Williamson v. Berry, 8 How. 495, 540, 12 L. Ed, 1170, 1189, (1850); Rose v. Himely, 4
2 Cranch 241, 269, 2 L.Ed. 608, 617 (1808).

3 Similarly, in *Elliott*, the U.S. Supreme court ruled:

4 “Where a court has jurisdiction, it has a right to decide any question which occurs in the
5 cause, and whether its decision be correct or otherwise, its judgments, until reversed, are
6 regarding as binding in every other court. **But if it act without authority, its judgments**
7 **and orders are regarded as nullities. They are not voidable, but simply void, and form**
8 **no bar to a remedy sought in opposition to them, even prior to a reversal. They constitute**
9 **no justification, and all persons concerned in executing such judgments or sentences are**
10 **considered in law trespassers.”** (Emphasis added) *Elliott v. Lessee of Piersol*, 26 U.S. 1
11 Pet.328 (1828).
12

13 It is also well established that there is no time limit for a party to bring a motion under FRCP
14 60(b)(4). Since a void order has no legal force or effect there can be no time limit within which to
15 challenge the order or judgment. Further, since the order has no legal force or effect, it can be
16 repeatedly challenged, since there is no lawful authority to make a void order valid. *Bates v.*
17 *Board of Education, Allendale Community Consolidated School District No. 17*, 136 Ill.2d 260,
18 267 (1990) (a court “cannot confer jurisdiction where none existed and cannot make a void
19 proceeding valid.”); *People ex rel. Gowdy v. Baltimore & Ohio R.R. Co.*, 385 Ill. 86, 92, 52
20 N.E.2d 255 (1943). *In re Marriage of Macino*, 236 Ill.App.3d 886 (2nd Dist. 1992) (“if the order is
21 void, it may be attacked at any time in any proceeding, ”); *Evans v. Corporate Services*, 207.
22
23

24 CONCLUSION

25 There can be no dispute that EA’s Counterclaim sought to cancel U.S. Registered Trademarks
26 that are co-owned by Future and yet Future was not a party to the law suit. It also cannot be disputed that
27
28

1 the settlement between EA and Edge Games sought to cancel U.S registered trademarks that were co-
2 owned by Future and Edge Games, and yet Future was not a party to the settlement. Further, there can
3 be no dispute that the Court's Stipulated Judgment and Final Order in key part called for the cancellation
4 of U.S. registered trademarks that are co-owned by Future and Edge Games, and yet Future was not a
5 party to the law suit. Since it is axiomatic that no order arising from a law suit, even a stipulated one, can
6 be valid if that order even just in part seeks to bind or impact an entity or person who was not a party to
7 the law suit, then here it is clear that the Court's Stipulated Judgment and Final Order were void on their
8 face (void *ab initio*) since Future would have needed to be a party to the law suit for either the Judgment
9 or Final Order to be valid.

10 Consequently, Edge Games respectfully requests that the Court confirms that its October 2010
11 Stipulated Judgment and Final Order be affirmed as void for lack of the court's jurisdiction in the
12 absence of Future as a necessary and indispensable party.

13
14 Dated: May 17, 2012

Respectfully submitted,

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